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supply the power, when the taking is purely for a private purpose. *Icter v. Vinton-Roanoke Water Co.* (1913) 114 Va. 769; *Thom v. Georgia Mfg. Co.* (1907) 128 Ga. 187. The principal case, while sustaining the theory of "public advantage" in general, does not consider the conditions in Nebraska sufficient to widen its scope of application.

E. J. M.

EVIDENCE—PRESUMPTIONS—RES IPSA LOQUITUR—SUFFICIENCY OF EVIDENCE.—FANSHAWE V. RAWLINS (1916) 98 ATL. (N. J.) 439.—In an action to recover for the care and board of the defendant's horses, the defendant set up a counterclaim for an injury to a mare which he proved occurred while the mare was at pasture on the plaintiff's farm. He offered no additional facts as evidence to show that the plaintiff was negligent, but asked for an instruction that the burden of proof shifted, which was refused. *Held*, that there was an error, as the doctrine of *res ipsa loquitur*, though applicable, warranted merely a submission of the question to the jury.

Where the doctrine of *res ipsa loquitur* has been clearly and distinctly presented, most courts have held in the case of agisters, as well as in negligence cases generally, that the burden of proving negligence affirmatively is on the plaintiff. *Nichols v. Union Stockyards and Transit Co.* (1916) 193 Ill. App. 14; *Everitt v. Foley* (1907) 132 Ill. App. 438; *Whitaker v. Chicago, St. P. M. and O. R. Co.* (1911) 115 Minn. 140. A few courts (principally in South Carolina) have held that where it is shown that an injury happened while the animal or chattel was in the care of the defendant, the doctrine of *res ipsa loquitur* applies and the burden of proof shifts to the defendant. *Nutt v. Davison* (1913) 54 Col. 586; *Sullivan v. Charleston and W. C. R. Co.* (1910) 85 S. C. 532. But the burden of proof, in the sense of the risk of non-persuasion, never shifts during the course of a trial, but remains with the plaintiff to the end. *Casey v. Donovan* (1896) 65 Mo. App. 521. In the sense of the necessity of going forward with the evidence, to meet a *prima facie* case, the burden of proof may shift, but this does not mean that the defendant must show by the preponderance of the evidence that he used due care. *Briglio v. Holt* (1915) 147 Pac. (Wash.) 877. The principal case follows the majority rule, holding that the occurrence of an injury is merely *prima facie* evidence which may warrant, but does not compel, an inference of negligence, and does not necessarily amount to proof. *Mumma v. Easton and A. R. Co.* (1905) 73 N. J. L. 653. Unless the facts are such that only one inference can be drawn, the question is one for the jury. *Vaughn v. Bixby* (1914) 24 Cal. App. 641. The function of the maxim of *res ipso loquitur*, therefore, is merely to carry the question of negligence past the court into the field of the jury. *Sewell v. Detroit United R. Co.* (1909) 158 Mich. 407.
S. J. T.

EVIDENCE—SUBSTANTIVE LAW—ORAL AGREEMENT VARYING WRITTEN CONTRACT—PARTIAL FAILURE OF CONSIDERATION.—INTERNATIONAL HARVESTER Co. v. PARHAM (1916) 90 S. E. (N. C.) 503.—A note recited on its face that it was given for a manure spreader. The maker offered to prove

a contemporaneous oral agreement that the payee was to deliver a knife grinder also, and contended that a delivery of it was a condition precedent to his liability on the note. *Held*, that the oral agreement would be effective to show a partial failure of consideration, but not to show the non-performance of a condition precedent. *Allen and Walker, JJ., dissenting.*

As between the immediate parties to a note or others having notice, oral agreements affecting the fixed or implied terms of the note are admissible. *Wigmore, Evidence*, Vol. IV, pp. 2443. So the consideration may be shown by oral evidence, and the fact that part is recited does not make the oral agreement ineffective. *Everhart v. Puckett* (1881) 73 Ind. 409; *Stringfellow v. Ivie* (1882) 72 Ala. 209. However, an oral agreement subjecting the note to a condition or contingency, or affecting the time of payment, or the amount of payment, is invalid, since it affects the variable or expressed terms of the obligation. *Leonard v. Miner* (1898) 120 Cal. 403; *Wood v. Surrells* (1878) 89 Ill. 107; *Kelsey v. Chamberlain* (1881) 47 Mich. 241; *Loudermilk v. Loudermilk* (1893) 93 Ga. 443. Therefore, it seems the majority opinion of the court was correct.

J. N. M.

INJUNCTION—SOLICITING OF CUSTOMERS OF FORMER EMPLOYER.—*NEW METHOD LAUNDRY CO. v. JOHN W. MACCANN* (1916) 161 PAC. (CAL.) 990.—Defendant, after several years of employment by the plaintiff as a driver and solicitor for laundry work, left his position without notice and engaged himself in a like situation with a rival firm, soliciting laundry work from among his former employer's customers and receiving some of their business. *Held*, that an injunction would lie for soliciting, but not for receiving work from the patrons of his former employer.

For a discussion of the principles involved in this case, see 25 YALE LAW JOURNAL, 499.

L. J. N.

POLICE POWER—VALID EXERCISE—BILL-BOARDS.—*THOS. CUSACK CO. v. CHICAGO* (JAN. 15, 1917) 242 U. S. 526, 37 SUP. CT. REP. 190.—An ordinance of the city of Chicago prohibited the erection of bill-boards in residence sections without first obtaining the consent in writing of the owners of a majority of the frontage on both sides of the street in the block. *Held*, that the ordinance was constitutional and not an unrestrained or arbitrary exercise of the police power.

It was contended that this ordinance violated the Fifth Amendment of the Federal Constitution. The first eight amendments, however, apply exclusively to the exercise of power by the Federal government. *Eilenbecker v. Plymouth County* (1890) 134 U. S. 31. It was also contended that such an ordinance was a delegation of legislative authority to the whims and caprices of neighboring property owners. The Supreme Court